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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,732	07/20/2000	GEORGES SMITS	TIENSE RAFF.	8993

7590 10/20/2003

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EXAMINER	
CHUNDURU, SURYAPRABHA	
ART UNIT	PAPER NUMBER
1637	

DATE MAILED: 10/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	09/600,732	SMITS ET AL.	
	Examiner	Art Unit	
	Suryaprabha Chunduru	1637	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: *none*.

   Claim(s) objected to: *none*.

   Claim(s) rejected: *65-97*.

   Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

JEFFREY FREDMAN
PRIMARY EXAMINER

Continuation of 5. does NOT place the application in condition for allowance because: Applicants' arguments are fully considered and found not persuasive. Applicants argue that the combination of all the indicated features defining the conditions for seeding, growing and harvesting/process of chicory roots source material are not suggested or obvious over the prior art of the record. The arguments have been fully considered and found not persuasive. Further Applicants argue that the reference of Van Den Ende et al. does not teach the particular conditions for seeding+growing+harvesting/processing the chicory roots. The arguments are found not persuasive, particularly because Van Den Ende et al. teach the particular conditions. The further recitation of a limitation drawn to the temperature below which changes in carbohydrate composition in chicory roots occur will be given patentable weight, but will be deemed an inherent property of the specifically claimed compounds, in accord with In re Cruciferous Sprout Litigation, 64 USPQ2d 1202 (CA FC 2002), where the Federa Circuit noted that the glucosinolate content of the broccoli sprouts was a limitation, but was inherently present in all broccoli sprouts. Similarly, Van Den Ende et al. performed his experiment from June 1, 1994 to October 25th , 1994 as shown by page 44, column 1, paragraph 4 and since the temperature in Belgium from June 1, 1994 to October 31, 1994 did not drop below 1 C as evidenced and exemplified by the attached printout of Belgium's weather from a website, the method must be the same. Therefore, the substitutive limitation in the claim 65 would not change the scope of the claim. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).Thus it is obvious to one skiled in the art to combine the teachings of the prior art of the record to achieve an expected advantage of developing an improved method for inulin production. Therefore the rejections are maintained herein.